

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No. <b>04-N-12352-PEM</b>
	)	
<b>SUZANNE EMIKO CARVER,<sup>1</sup></b>	)	
	)	<b>DECISION AND ORDER SEALING</b>
<b>Member No. 188936,</b>	)	<b>DOCUMENTS</b>
	)	
A Member of the State Bar.	)	
	)	

---

**I. Introduction**

In this disciplinary proceeding, respondent **Suzanne Emiko Carver** stipulated to failing to comply with a court order, in violation of Business and Professions Code section 6103, by failing to timely comply with California Rules of Court, rule 9.20 (c), as ordered by the California Supreme Court.

Respondent has successfully completed the State Bar Court's Alternative Discipline Program (ADP).<sup>2</sup> (Rules Proc. of State Bar, rules 800-807.) The court recommends that respondent be suspended from the practice of law for two years and until she has shown proof

---

<sup>1</sup> Respondent's name was changed from Suzanne E. Kawase to Suzanne Emiko Carver effective May 14, 2008.

<sup>2</sup> The ADP was formerly known as the State Bar Court's Pilot Program for Respondents with Substance Abuse or Mental Health Issues and the State Bar Court's Program for Respondents with Substance Abuse or Mental Health Issues.

satisfactory to the State Bar Court of respondent's rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, that execution of such suspension be stayed and that respondent be placed on probation for five years with conditions, including an actual suspension of six months. (Rules Proc. of State Bar, rule 803.)<sup>3</sup>

Because respondent was placed on inactive status for one year between March 12, 2005, and March 21, 2006, it is also recommended that she receive credit for the period of inactive enrollment towards any period of actual suspension to be imposed by the Supreme Court. (Bus. & Prof. Code, § 6233.)

## **II. Significant Procedural History**

After the filing of formal disciplinary charges by the Office of the Chief Trial Counsel of the State Bar of California (State Bar), respondent sought to participate in the State Bar's Lawyer Assistance Program (LAP) and the State Bar Court's ADP.

On January 13, 2005, respondent executed a Participation Agreement with the LAP.

Respondent submitted a declaration to the court which established that at the time of her misconduct, she was suffering from mental health and alcohol dependency issues. Respondent also executed a stipulation regarding facts and conclusions of law in this matter. Respondent's declaration and the stipulated facts, as well as the opinion of a medical professional, establish a causal connection between respondent's mental health issues and the misconduct found in this disciplinary proceeding. As such, the court found that respondent had adequately established a nexus between her mental health issues and her misconduct in this matter, i.e., that her mental health issues directly caused the misconduct set forth in this matter.

---

<sup>3</sup>References to rule are to the Rules of Procedure of the State Bar, unless otherwise noted.

On March 9, 2005, the court lodged its Decision Re Alternative Recommendations for Degree of Discipline (March 2005 Decision), setting forth the recommended discipline if respondent successfully completed or was terminated from the court's ADP. On that same day, respondent entered into a Contract and Waiver for Participation in the State Bar Court's Program for Respondents with Substance Abuse or Mental Health Issues; the parties' stipulation was lodged with the court; and respondent was accepted as a participant in the ADP.

On April 4, 2008, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program (certificate), setting forth that respondent has complied with the requirements of the LAP Participation Agreement/Plan for one year prior to the date of this certificate, and that during this period, no unauthorized substances were detected.

At the October 20, 2008 status conference, the court found that respondent successfully completed the ADP and subsequently ordered the stipulation lodged March 9, 2005, be filed. The court also indicated that it would issue this decision recommending the lower level of discipline reflected in the March 2005 decision.

### **III. Findings of Fact and Conclusions of Law**

The Stipulation Re Facts and Conclusions of Law (stipulation) approved by the court and filed on October 22, 2008, are incorporated by reference as if set forth fully herein. The stipulation sets forth the factual findings, conclusions of law and certain aggravating and mitigating circumstances in this matter.

Furthermore, at the time respondent engaged in the misconduct for which she has been found culpable, respondent was suffering from mental health issues which directly caused the misconduct in this proceeding. Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that those emotional difficulties were directly responsible for the misconduct, provided that the

attorney has also established, through clear and convincing evidence, that he or she no longer suffers from such difficulties. (*Porter v. State Bar* (1990) 52 Cal.3d 518, 527; *In re Naney* (1990) 51 Cal.3d 186; 197; *In re Lamb* (1989) 49 Cal.3d 239, 246; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) However, the Supreme Court has also held that, absent a finding of rehabilitation, emotional problems are not considered a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

Respondent has been participating in the LAP since 2005 and has successfully completed the ADP. Respondent's successful completion of the ADP and LAP, as well as the certificate, qualify as clear and convincing evidence that respondent no longer suffers from the mental health issues which led to her misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance. (Standard 1.2(e)(iv).)

#### **IV. Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, to preserve public confidence in the legal profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

Before respondent was accepted for participation in the ADP, the State Bar submitted a brief to the court on the appropriate discipline in this matter. After reviewing the State Bar's brief and considering the standards and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law and aggravating and mitigating circumstances with respect to these disciplinary proceedings and respondent's declarations regarding the nexus between her mental health issues and her misconduct in this matter, the parties were advised of the discipline

which would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline that would be recommended if respondent was terminated from the ADP. Respondent thereafter entered into a contract to participate in the ADP and was accepted for participation in the ADP.

Thereafter, respondent successfully participated in the ADP and, as set forth in the order filed on October 27, 2008, the court found that respondent successfully completed the ADP. Accordingly, the court will recommend to the Supreme Court the lower level of discipline.

### **V. Recommended Discipline**

Therefore, it is hereby recommended that respondent **Suzanne Emiko Carver** be suspended from the practice of law for two years and until she shows proof satisfactory to the State Bar Court of her rehabilitation, present fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, that execution of such suspension be stayed, and that respondent be placed on probation for a period of five years, on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first six months of the period of probation,<sup>4</sup> with credit toward the period of actual suspension given for the period of inactive enrollment which commenced on March 12, 2005, and ended on March 21, 2006;
2. During the period of probation, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
3. Within 10 days of any change in the information required to be maintained on the State Bar's membership records pursuant to Business and Professions Code section 6002.1,

---

<sup>4</sup> Respondent had provided satisfactory proof to the Office of Probation that she completed the restitution condition on March 23, 2005, as required in Supreme Court case No. S110691 (State Bar Court case Nos. 01-O-03193; 03-PM-02730).

subdivision (a), including her current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report any such change in writing to the Membership Records Office of the State Bar and to the Office of Probation;

4. Unless respondent has successfully completed the Lawyer Assistance Program, respondent must comply with all provisions and conditions of her Participation Agreement with the LAP and must execute an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of her participation in the LAP and her compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. If respondent has successfully completed the LAP, respondent must provide the Office of Probation with satisfactory certification of completion of the LAP;
5. Respondent must submit written quarterly probation reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions set forth in this Decision during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the reporting due date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than 20 days before the last day of the probation and no later than the last day of said period;
6. Within 30 days after the effective date of discipline, respondent must contact the Office

of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;

7. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with these probation conditions;
8. These probation conditions will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding; and
9. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years that is stayed will be satisfied and that suspension must be terminated.

This court does not recommend that respondent be required to take and pass the Multistate Professional Responsibility Examination (MPRE) because she was previously ordered to do so as part of the discipline imposed in Supreme Court case No. S110691 (State Bar Court case No. 01-O-03193) and had successfully completed the MPRE on March 12, 2005.

Likewise, since respondent filed the California Rules of Court, rule 9.20(c) (formerly rule 955(c)) compliance affidavit on August 20, 2004, and had not practiced law between that date and March 21, 2006, and since credit toward the period of her actual suspension will be given for the period of her inactive enrollment, it is not recommended that she be required to further comply with the requirements of rule 9.20 in this proceeding.

Finally, it is recommended that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

#### **VI. Order Sealing Documents**

The court orders this Order Sealing Documents be filed. Thereafter, pursuant to rule 806(c) of the Rules of Procedure, all other documents not previously filed in this matter will be sealed under rule 23 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their official duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

**IT IS SO ORDERED.**

Dated: January \_\_\_\_, 2009

---

PAT McELROY  
Judge of the State Bar Court